

NETH-29

SENTENCE

IN THE NAME OF THE QUEEN!

The Temporary Court-martial in Tandjong Pinang in the case of the Prosecutor, *ratione officii*, against:

YAMAGISHI TOSHIHIDE,

aged 35, Japanese, born in Nakahoncho, Nikomachi Kamichuga Gun, Tochiyi Ken, clerk with the Furukawa Co. Ltd., Somuka branch, last address No.4 Kidjang, now detained in the State Prison in Tandjong Pinang.

In view of the committal order to the Temporary Court-martial issued by the Prosecutor and dated 31st. May 1948, whereby the accused is charged:

that he, a Japanese and therefore a subject of an enemy power, on dates not now to be precised but falling in the years 1943, 1944 and 1945 therefore in time of war, in Kidjang or elsewhere in the sub-district Tandjong Pinang (Riouw Residency), as "crank" (clerk) in the service of the Japanese Limited Liability Company, Furukawa Mining Co., was guilty of war crimes by:

- a. on a date not now to be precised but falling in the first half of 1945, in Kidjang gave a certain Mrs. Pish, alias Ma'Kotel, a blow on the head with a stick about 80 cm. long and about 2½ cm. thick on the end of which a bit of iron was fixed, this because contrary to a prohibition of such she was said to have sold biscuits or have wished to sell them, as a result of which blow she received an injury on the right side of her head, lost consciousness at once or shortly after and died two days later;
- b. on a date not now to be precised but falling in or about the year 1944 ~~gave~~ in Kelong gave one Liam Sia Hai, who was said to have sold fish to Singapore contrary to an order prohibiting this, at least 4 blows with a stick about 1 m. long and 3 cm. thick;
- c. on two different dates not now to be precised but falling in about the year 1944, in Batoe Besar and Kelong respectively, gave one Lam and one Baid bin Siman a number of blows with the hand and with a stick;
- d. on a date not now to be precised but falling about the year

1943, in Kelong giving one Saleman bin Loedin and one Hoesin bin Lepek, who were said not to have been sufficiently energetic in their fishing activities, the results of which were destined for the Japanese, a number of blows with the hand or a stick on the cheek and/or head; as a result whereof the persons named under b to d inclusive suffered severely, mentally and physically, and all of which acts constitute a violation of the laws or customs of war.

In view of the documents of the case, they having been shown to and seen by the accused in so far as use was made of them;

In view of that which has been advanced in his defence by the accused and his counsel;

Considering the objection of ⁱⁿcompetence raised by counsel for the accused on the ground that although the accused is of Japanese nationality he cannot have violated the laws and customs of war since he was put as a civilian to work in the function of "crani" for a civilian company;

that the Court-martial however is of the opinion that it certainly is competent to take judicial notice of the present case, that indeed from the accused's own statement made at the sitting he was working for the Furakawa Co. in Japan and was sent for this company to its branch in Kidjang (Riouw) which had taken over the "Nederlandsch Indische Bauxiet Maatschappij" (Netherlands Indian Bauxite Development Co.);

that with the consent of the Japanese War Ministry he went to Singapore as a militarised civilian and three days later was sent on to Kidjang;

that he was there charged with the feeding of the coolies put to work for this company, in which ^{function} ~~capacity~~ he committed the crimes with which he has been charged;

that on his arrival in Singapore he heard from his chief that he had been demilitarised again, which for the rest did not alter his position in any way;

Considering that the extraction of bauxite was of paramount importance for Japan for the continuation of the war, and that

thus this Furakawa Co. also had a task for the benefit of the Japanese conduct of the war;

that this company which had this task to fulfil was given the chance of doing so by the Japanese military occupation and that no arguments are needed to show that the industry was under the supervision of the Japanese military authorities;

Considering that the accused then in his function also played a part in this company's war task, namely, that he had to see to the feeding of the coolies put to work for the company, and he therefore played a part - be it a remote one - in the general war effort, and in this part could violate the laws and customs of war;

Considering with regard to the acts with which he has been charged, that at the sitting the accused stated that he cannot remember having struck Mrs. Piah, alias Ma'Kotel, as he was drunk that evening, that he does however still remember having been warned that the woman in question was selling biscuits, this being forbidden, and that he then went to her house, that he also remembers that the woman died and that he was questioned about the matter by the Kempeitai who handed the case over to the civil police, but that it was dropped on the Japanese doctor declaring that the woman had died from heart trouble; that he did usually walk round with a wooden stick but there was no iron on it; that he admits having struck the other persons mentioned in the charge;

Considering that with regard to the cases mentioned in the margin the following reports of the interrogation of witnesses were read out ~~out~~ and shown the accused, they reading in substance as follows:

Case Piah, alias Ma'Kotel

SAHARI BIN MADJID (sworn):

that when on a Thursday evening in 1945 Mrs. Piah, alias Ma'Kotel, was busy making biscuits YAMAGASHI YOSHIMIDE came walking up and asked her whether she was making the biscuits to sell;

that on her denying it she was struck a number of times by the accused on the head with a stick which had an iron end on it, whereupon Piah, bleeding from the head, ran into the house

where she fell down unconscious;

that on the accused calling her she did not come out, whereupon he, witness, was ordered by the accused to go and fetch her but as she could no longer walk she stayed inside;

that accused got angry with him too and wanted to hit him, upon which he also rushed into the house;

that he saw that accused took the frying-pan and biscuits away with him;

that at 8 p.m. next day, Saturday, Piah died;

ALIE BIN ACHMAD (sworn):

that about 9 o'clock one Thursday evening in 1945 (he has forgotten the month) he heard that Piah had been struck by the accused;

that he then went home and saw Piah lying unconscious in her room there, she having a wound three fingers broad on her head;

that Sahari told him that accused had hit her with a stick having an iron extremity;

that the next day, Friday morning, Kobayashi of the Kempeitai came to Piah;

that the day following this, Saturday evening, at about 8 o'clock Piah died;

that he, witness, reported this to Kobayashi;

that he saw that Kobayashi seized a stick as evidence;

that he went to the hospital to ask for some white material but as the Japanese ^{doctor} would not believe him he went with witness to Piah's house;

that he went with the doctor to Piah's house where they also found Kobayashi;

that the doctor examined Piah;

that he himself saw that Piah had a wound on her head three fingers long and two and a half fingers deep;

that Piah was buried next day in the Kebon Doerian Kidjang;

Mrs. TI BINTI ARSAD (sworn):

that about 8 o'clock one Thursday evening in 1945 (she no longer knows the month) her mother Piah was struck by the accused;

that when she went home she saw her mother lying unconscious with a bleeding wound on her head;

that she heard from Sahari bin Madjid that her mother had

been hit on the head with a stick having an iron point;

that she was examined by a Japanese doctor and a Kempei soldier whose name she no longer knows;

that about 5.30 the following Saturday her mother was buried in the Kebon Deerian Kidjang;

Considering that at the request of counsel for the accused the following was heard at the sitting as a witness:

TSUJI TAEEO, who stated;

that as commandant of the Kempeitai in Tandjong Pinang he went to Kidjang to investigate this affair;

that he interrogated about 5 witnesses who all declared that the accused had hit Mrs. Piah;

that when he searched accused's house he found a golf club with a partially cut-off iron end and this he seized;

that he also found another stick;

that accused continued obstinately to deny the deed, appealing that he knew nothing more about it because he had been drunk;

that because accused did not belong to the military the case was given over to the civil police to be dealt with further, but that accused's chief appears to have spoken to the police and the case was dropped;

Considering that accused has persisted in his statement that he no longer remembers having hit Mrs. Piah, appealing to his having been drunk;

Considering that at the preliminary investigation no attention was paid to this but that, further, none of the witnesses state that accused was drunk that evening;

Considering that in the Court's opinion the question as to whether the stick with which accused is said to have hit had a bit of iron on it has not been satisfactorily answered; that it is already dark at 8 p.m. so that the possibility exists that the witnesses made a mistake about this;

Considering that for the rest the Court-martial considers it legally and convincingly proved that accused struck Mrs. Piah in such a way that she died two days later from the in-

injuries received;

Case Liem
Sia Hai

LIEM SIA HAI (sworn):

that at about 8.30 one evening in July 1944 accused and a certain Tjan A Wang came to his house in Kelong and Tjan A Wang ordered him to call all the coolies (twelve) together;

that when the accused then asked the coolies why they had not obeyed Tjan A Wang's orders to go to Kidjang he received no answer;

that when he, witness, said that he was not at Kelong when Tjan A Wang gave the coolies the order accused struck him on the head with a wooden stick which caused him to fall into the sea, he hiding after this under a Malay house; that he was again caught and again beaten by the accused with the stick that for ten days he had to have medecine; that finally his "tongkang" (a Chinese boat) was seized;

TJAN A WANG (sworn):

that he saw accused strike Liem Sia Hai about 5 times with his hand and 3 to 4 times on the head with a stick, and then after this in his house another 3 or 4 times with a stick on the head and legs, causing these to bleed;

Considering that in answer to these statements accused has said that he did hit Liem Sia Hai with a stick in front of his house but not inside it;

Case Lam and
Baid bin Siman

LAM (sworn):

that in 1944 he was out fishing with accused in a boat; that accused undressed and jumped into the sea; that he then put away accused's clothes; that when accused wanted to dress again he missed his wristlet watch and accused witness of having let it fall into the sea; that accused became angry and hit him with his hand and a bit of rope; that next day back in Kidjang he was hit by the accused with a stick and received a wound on his head which bled; that accused gave him a day off to go and fetch medecine;

BAID BIN SIMAN (sworn):

that one evening in 1944 he was summoned by Tjan A Wang to go to the accused; that when he got up to the accused the latter at once struck him on the head because he had caught

no fish, after which he was allowed to go home again; that two days later he was again beaten with a stick, this time by Tjan A Wang;

TJAN A WANG (sworn):

that he did not see that witness was hit on the head by the accused and he himself did not hit witness;

Considering that in answer to Lam's statement accused has said that he did strike Lam 4 times with his hand when they were on board but not with a rope, and he hit him 3 times when they returned to Kidjang;

and in answer to the statements of Baid bin Siman and Tjan A Wang, that in the latter's presence he, accused, struck Baid with his hand;

Case Saleman
bin Loedin
and Hoesin
bin Lekep

HOESIN BIN LEKEP (sworn):

that in 1943 on the accusation that he had not caught any fish he was hit on the head and face with a stick by the accused, his teeth being knocked out and he rendered unconscious and as a result he was not able to work for a week;

TJAN A WANG (sworn):

that he told accused that Hoesin bin Lekep had caught no fish for a fortnight; that he was ordered by the accused to summon Hoesin bin Lekep; that he saw that accused hit Hoesin bin Lekep on the head with a stick and after this on the face and mouth with his hand; which caused Hoesin bin Lekep to bleed and he fell down;

SALEMAN BIN LOEDIN (sworn):

that on the accusation that he had caught no fish he was hit by the accused on the face with his hand and he, witness, fainted on account of this;

Considering that in answer to this the accused has said that he only hit Hoesin bin Lekep with his hand and the latter was already without any teeth when he entered accused's employ

that he only hit Saleman bin Loedin with the flat of his hand and Saleman did not faint;

Considering that from the statements made by the accused

and the above witnesses' declarations taken in connection one with another the Court-martial considers it legally and convincingly proved that accused was guilty of the acts with which he has been charged, which acts constitute a violation of the laws and customs of war, and accused must on that account be sentenced to punishment;

Considering with regard to the qualification, that in the Court-martial's opinion the acts committed by the accused do not fall under the specification "torture" as this appears in the Definition of War Crimes Decree;

that however since this Decree does not give a limitative enumeration the Court-martial is of the opinion that a qualification such as that to be named in the dictum can also be brought under the conception, war crime;

Considering with regard to the degree of punishment, that accused has shown himself to be someone who, whenever he thought he had come across an infringement of the regulations hit out immediately; that as the result of this, as has been considered above, one of his victims even died; that however the Court martial will take into consideration that the accused's mission of providing food in these territories was a very difficult one, for everything depended on whether fish was delivered regularly or not, wherefore the Court judges that a punishment of ten years' imprisonment is in correct proportion to the gravity of his crimes;

In view of the War Crimes Penal Law Decree, in particular art.10, the Definition of War Crimes Decree and of the War Crimes Legal Procedure Decree;

ADMINISTERING THE LAW:

Declares itself competent to deal with the present case;
Declares the accused named at the head of this,

YAMAGUCHI TOSHIHIDE,

guilty in the matter of the charge brought against him of the war crimes:

"Ill-treatment resulting in death";

"Ill-treatment of civilians";

Sentences him on that account to TEN YEARS' imprisonment;

Judgment passed on 11th June 1948 by:

Capt. Dr. W.R.Weisfelt, Inf. Res.,	President
1st Lt. R.J.Moddejonge, Inf.,	Members
1st Lt. M.E.A. Gobus, Inf.,	
in the presence of:	
1st. Lt. R.E,E.J. Stiphout, Inf. Res.,	Secretary

and resumed and decreed 11th June 1948, the secretary in connection with his departure being unable to sign this judgment.

The President,
sgd. Capt. Dr. W.R. Weisfelt, Inf.
Res.

The Members,
sgd. R.J. Moddejonge
" M.E.A. Gobus.

Fiat of Execution.

Fiat of execution of the above sentence granted this day, 17th August 1948, by me, Dr. J.J.C.H.van Waardenburg, Resident of Riouw.

The Resident of Riouw,
sgd. Dr. J.J.C.H. van Waardenburg.

Pronounced at the sitting of the Temporary Court-martial of 19th August 1948, by Capt. Dr. W.R. Weisfelt, Inf. Res., president, in the presence of 1st. Lt. Dr. E.H.P.C.van de Voort, Inf., 1st. Lt. Dr. I.H. Ritzema, Inf. Res., members, and Dr. C.H. Hins, deputy prosecutor, who deputized as secretary for lack of an officer or non-commissioned officer suitable to be appointed as secretary by the commanding officer, as well in the presence of the accused.

Noted by me,
The Deputy Secretary,
sgd. Dr. C.H. Hins.

The President,
sgd. Dr. W.R.Weisfelt.

IN THE NAME OF THE QUEEN!

The Temporary Court-martial in Amboina has passed the following sentence in the case of the accused:

TANAKA TORU,

aged 55, born in Saga-Ken, Saga-Shi, Matsubara Machi No 93, living in Tokyo, Setagaja Ku, Kiodo Machi No 573, Major-General in the Imperial Japanese Army.

The Temporary Court-martial aforesaid:

In view of the committal order to the Temporary Court-martial issued by the Prosecutor of that Court-Martial, dated 30th November 1947, in which the accused is charged by the said Prosecutor:

"that he, on dates not now to be established with exactitude but in any case falling within the period between 1st September 1944 and 1st June 1945 therefore in time of war, in Lautem, at anyrate on the island of Timor, as subject of the enemy power Japan, in or during his function of Major-General commanding the 2nd Formosan Regiment Infantry, committed war crimes, he having, contrary to the laws or customs of war, a. during or after a punitive expedition sent by him to the island of Sermata in connection with the murder of, at anyrate rising against 6 Japanese, at the head of which expedition he had placed a certain Captain Shimada,

1. about October 1944 gave the aforesaid Captain Shimada telegraphic orders to kill a total of about 60 Indonesians in Elo, at anyrate on the island of Sermata, which order was carried out by Captain Shimada or which he caused to be carried out;
2. about November 1944 gave telegraphic orders to his subordinate Lieutenant Ohara Seidai to kill on the island of Moa 34 Indonesians who had been taken prisoner on the islands of Sermata and Lawang during the above-mentioned expedition, which order was carried out by Lieutenant Ohara Seidai or which he caused to be carried out;
3. in November 1944 caused a certain Joost, coming from the island of Luwang, as well as two other persons who had been arrested during the above-mentioned expedition and taken to Timor, to be killed in Lautem, at anyrate on Timor, by subordinates of his whose names are unknown;
- b. on a date in May 1945 not now to be established with certainty, gave telegraphic orders to his subordinate Lieut-

/punitive

Lieutnant Ohara Seidai to kill in Tonawawan, at anyrate on the island of Moa, the Regent of Toetoekei named Marthin Norimarna, the latter's parents and his brother, also the "goeroe" (school-master) Timotheus, as well as a certain pranakan Chinaman (i.e. a Chinaman born in the N.E.I.) called Keng;

while he knew that the persons named under a and b had not been tried, at least not in their presence, and that he knew, at least should have known, that this procedure was contrary even to Japanese law";

the which is specified and made punishable by art. 1, Definition of War crimes Decree, Stat. bk. 1946 No.44, in conjunction with arts.4 and 9, War Crimes Penal Law, Stat. bk. 1946 No.45.

In view of the serving of the writ and summons whereby the accused is called upon to appear at 8 a.m. on Saturday, 20th December 1947, at the sitting of the Temporary Court-martial, holding session in the Court-martial building in Batoe-Gadjah (Amboina);

In view of the documents of the preliminary investigation;
Having heard the accused and the witness;

Having heard the sentence asked for ~~and~~ in view of the written demand read out by the Prosecutor and then handed over in the Court-martial, the purport of which is that the Court-martial shall declare the accused guilty of:

"Mass murder" and "murder committed six times",
and on that account sentence him to the DEATH penalty.

Considering that the witness heard at the sitting, Ohara Seidai, has in substance stated on oath:

that in September 1944 the accused sent a punitive expedition under the leadership of Captain Shimada to the island of Sermata, Captain Shimada, witness and the men under them taking part in it,

that this punitive expedition was equipped and about 100 accused were executed because part of the population had joined in a rising during which a number of Japanese belonging to the wireless service and to the Kempeitai were killed;

that the said Captain Shimada told him that he had had a

total of 60 personas executed on Sermata;

that during the expedition on Sermata he saw that Captain Shimada had 5 persons executed, namely 3 men and 2 women, among them being he thinks the mother and sister of Joost;

that 5 days before he had heard Shimada say to Joost's father, mother and sister that if Joost were not found within 5 days they would be killed in his place;

that he, witness, had 24 persons bayoneted on Moa following a telegraphic order from the accused;

that Joost and 2 others, who were considered to be the leaders of the rising, were taken with him direct to Lautem by Shimada;

that he, witness, heard about 1st or 2nd May 1945 that the regent of Toetoekei, M. Norimarna, had formed an association on the island of Letti which was to help the Australians in the event of a landing on Letti, and that the regent's parents, one of his brothers, the regent's secretary and witness' foster-son, Keng, were co-founders of the association;

that witness thereupon went to the island of Letti where on investigation he found the above information to be correct and had the persons just mentioned put under arrest in Tonwawan;

that he reported the matter to the accused who by telegram demanded that the papers connected with it be sent him;

that about a month and a half later witness received telegraphic orders from the accused to kill the above-mentioned persons with the bayonet;

that witness had this order carried out;

Considering that on the grounds of what has been considered above it has been established by rights that the accused, at the time and place named in the indictment, as a subject of the enemy power Japan, in his function of Major-General commanding the 2nd Formosan Regiment Infantry, committed the acts appearing in the indictment and specified under a, 1, 2 and 3, and b, in the circumstances also specified in the said sections of the indictment;

Considering that the accused's defence, namely that the acts specified and proved above do not constitute war crimes, that they are indeed not contrary to the laws or customs of war,

is based by him on the grounds of art.4 of the Japanese Military Penal Code and of the state of emergency, which grounds can only be accepted by the Court with regard to the order to execute 57 of the 60 Indonesians mentioned under a, 1, of the indictment, but will not avail the accused with regard to the order to execute three of the according to estimation 60 Indonesians mentioned under that sub-section, namely the parents and sister of Joost, and those persons mentioned under a, 2 and 3, and b, which orders for an execution were given contrary to the laws or customs of war;

/at the sitting

Considering that from what accused stated at the preliminary investigation with regard to the order to execute the parents and sister of Joost, namely that they were not killed as hostages for Joost but because they had taken part in the consultations about the rising, which statement the accused ~~stated~~ has withdrawn but not in an acceptable way; from accused's statement that these three persons were excuted following a separate order, and from what witness Ohara Seidai, heard on oath at the sitting, has said with regard to this, the Court draws the circumstantial evidence that the parents and sister of Joost were killed as hostages for this latter;

Considering that on the grounds of what appears above the accused must be declared guilty of the war crimes to be further qualified in the dictum and sentenced to punishment in the matter;

Considering that now that the accused has been found guilty of causing the death of a great number of persons, and that, moreover, the killing of these persons, mostly done in a very cruel manner, namely by stabbing with a bayonet, took place by accused's orders, the Court is of the opinion that only the severest penalty must be considered as adequate and just;

In view of art.1 of the Definition of War Crimes Decree and arts.3,4 and 9 of the War Crimes Penal Law Decree;

Declares the accused named at the head of this:

TANAKA TORU,

guilty of the war crimes:

1. killing of hostages;
2. mass murder;
3. murder, committed three times as one continuous action;
4. murder, committed six times as one continuous action;

Sentences him on that account to DEATH;
Maintains the custody.

Judgment passed this day, Saturday, 10th January 1948, by us:

Capt. C.M. Schuddebeurs, President
K.N.I.L., Inf.

Capt. D.J. Gaspersz,)
Inf. Res.) Members
Capt. Dr. H.P.J.M. van Loon,)
Inf. Res.)

in the presence of:

1st. Lieut. Dr. Th. L. Doornweerd, Secretary.
Inf. Res.

Noted by me :

The Secretary,
sgd. Dr. Th. L. Doornweerd

The President,
sgd. C.M. Schuddebeurs.
" D.J. Gaspersz, 1st Member.
" Dr. H.P.J.M. van Loon,
2nd Member.

Fiat of Execution:

Fiat of execution of the above sentence granted this day,
Thursday, 22nd January 1948, by me, Deputy Resident of Amboina.

The Deputy Resident,
sgd. W. Scheffer.